THE HON'BLE SRI JUSTICE GODA RAGHURAM

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W.P.NO.2887 OF 2006

Between:

M/S.Nanda Printers, rep. By its proprietrix Smt.Nanda Bai, Hyderabad and another.

…Petitioners

vs.

The A.P.Mahesh Co-operative Urban Bank, Hyderabad.

…Respondent.

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.2887 OF 2006

ORAL ORDER

The petitioners preferred an appeal to the Debt Recovery Tribunal under Section.17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002(for short "the Act"), aggrieved by an order made against them under Section 13 of the Act. Apparently they did not pay the requisite fee along with the Securitisation Application. The Debt Recovery Tribunal directed the petitioners to pay Court fee on 21-10-

20025, which they failed to pay despite specific orders dated 21-10-2005, 26-10-2005, 07-11-2005 and 09-11-2005. Thereafter the application was dismissed for default on 30-11-2005.

The petitioners thereafter filed an application I.A.No.17 of 2006 for condonation of a delay of six (6) days in filing an application to set aside the default order dated 30-11-2005. In the affidavit filed in support of I.A.17 of 2006 the petitioners' claim that the first of them was sick on account of a cardiac problem, the second petitioner was looking after the first petitioner and therefore they could not contact their counsel till 05-01-2006 on which date the petition was filed and therefore the small delay of six days may be condoned.

By the order impugned the Debt Recovery Tribunal rejected I.A.No.17 of 2006 preferred by the petitioner on the ground that their conduct in filing of the Appeal and failing to pay the Court fee disentitles them to any relief. In the impugned order the Debt Recovery Tribunal also recorded that the supporting affidavit filed by the first petitioner does not reveal any reason for not filing a petition within the period of limitation and that the delay of six (6) days has not been adequately explained.

In the considered view of this Court the discretion exercised by the Debt Recovery Tribunal in rejecting I.A.No.17 of 2006 was erroneous. The delay is a mere six (6) days and the reasons, viz., cardiac problem and the assistance of the 2nd petitioner required to nurture the first petitioner is an adequate reason. A hypertechnical view appears to have taken by the Debt Recovery Tribunal, which does not commend itself to acceptance by this Court.

Accordingly the writ petition is allowed at the stage of admission after hearing the learned counsel for the respondents-Bank. The order of the Debt Recovery Tribunal, Hyderabad dated 17-01-2006 in I.A.No.17 of 2006 in S.A.No.60 of 2005 is set aside. I.A.No.17 of 2006 is allowed. The delay of six (6) days in filing the application to set aside the default order dated 30-11-2005 is condoned. The Debt Recovery Tribunal will now proceed to consider the application filed by the petitioners seeking setting aside of the default order dated 30-11-2005 on its own merits and in accordance with law. In the circumstances there shall be no order as to costs.

GODA RAGHURAM,J

16TH FEBRUARY, 2006

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